



FOR CLERK USE ONLY

City Council

Item No. \_\_\_\_\_

# CITY COUNCIL OF THE CITY OF CALEXICO FACT SHEET

Human Resources/Risk Management  
Department

September 7, 2010

Requested Date

**1. Request:**City Council approval ☒Other (specify) ☐Information Only/  
Presentation ☐Hearing ☐**2. Requested Action:**

Approve 60 day extension of On-Site Labor contract contingent upon City and On-Site agreeing to terms of a new agreement.

**3.**

Cost: Decrease ☐  
Increase ☒  
Decrease ☐  
Does Not Apply ☐

Amount: \_\_\_\_\_

Source: \_\_\_\_\_

Amount: \_\_\_\_\_

Redevelopment Agency

\$10,900.00

**4. Reviewed By:**

Finance Dept. on \_\_\_\_\_  
Comments: \_\_\_\_\_

By: \_\_\_\_\_

City Attorney on \_\_\_\_\_  
Comments: \_\_\_\_\_

By: \_\_\_\_\_

*Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.*

CLERK USE ONLY:

CITY COUNCIL DATE: \_\_\_\_\_

Action ☐Consent ☐Hearing ☐Filing ☐Presentation ☐Other(specify) ☐

Reviewed by: City Clerk \_\_\_\_\_  
Date \_\_\_\_\_

City Manager \_\_\_\_\_  
Date \_\_\_\_\_

# **CITY COUNCIL AGENDA REPORT**

**SUBJECT:** Extension of On-Site Labor Contract

**AGENDA DATE:** September 7, 2010

**PREPARED BY:** Rosalind Guerrero, Human Resources/Risk Management Director 

**APPROVED FOR AGENDA BY:** Victor Carrillo, City Manager

**RECOMMENDATION:** Approve 60 day extension of On-Site Labor Contract contingent upon City and On-Site agreeing to terms of a new agreement

**FISCAL IMPACT:** \$10,900.00      Redevelopment Agency expense

**BACKGROUND INFORMATION: (Prior action/information)**

The Redevelopment Agency on August 11, 2010 received approval to continue the services of the current Housing Manager position employed by On-Site Labor due to the workload and timelines that must be met.

The contract with On-Site Labor (formally EPS, Inc.) terminated on September 2, 2010, however, language in the contract specifies that a conversion fee is due if an On-Site employee is hired by the city. The conversion fee extends up to 12 months after the contract termination date. Should the City of Calexico hire an On-Site employee within one year of the termination date of the contract, the city will be liable to pay the conversion fee.

Human Resources is recommending that a new agreement be entered into with On-Site Labor that will allow the City to continue using the services provided by the Housing Manager through On-Site Labor for a period of 60 days. The new agreement will not place the City in a position to pay a conversion fee as the City Attorney under a separate item on today's agenda, is presenting to your Council a template of a draft agreement that may used when using the services of a temporary employment agency.

The 60 day extension will allow the Human Resources Department to initiate recruitment of a permanent position for the Redevelopment Agency.

**RECOMMENDATION:**

Authorize the City to enter into an agreement with On-Site Labor to provide services of a Housing Manager position for a 60 day period. The approval of the agreement is contingent upon the City and On-Site agreeing to the terms as approved by your Council and City Attorney.

**Agenda Item No.** \_\_\_\_\_

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Attachments: On-Site Labor Agreement (terminated September 2, 2010)  
Housing Manager Job Description  
Proposed draft agreement for temporary employment services

**Agenda Item No. \_\_\_\_\_**

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# EMPLOYMENT PARTNERING SERVICES, INC.

a California Corporation

## EMPLOYMENT SERVICES AGREEMENT

Agreement, ("Agreement"), consisting of four pages, is effective on the date executed below and is made between EMPLOYMENT PARTNERING SERVICES, Inc., a California corporation, hereinafter referred to as "EPS", and the City of Calexico, a public municipality, herein referred to as "Client" or "City", collectively referred to as the [Parties] consists of the following terms and conditions pertaining to the acceptance by Client of temporary and/or leased employees furnished by EPS as set forth herein. Addendum "1".

1. **TERM OF AGREEMENT.** The initial term of this agreement shall be for 36 months. Thereafter, unless a new term is agreed to, this Agreement shall remain in effect from month to month, terminable on 30 days written notice by Client. EPS except in case of a material breach as described below.

### 2. FEES.

2.1. Client shall pay EPS fees as initially specified in this Agreement and as may subsequently be modified in writing agreed to by the parties. The fees are initially specified as a designated amount per hour based on a fee schedule which may change from time to time to reflect changing economic conditions and which will vary in accordance with the classification of employees provided. The initial fees for the classification of employees specified below are as follow:

Job Classification	Hourly Fee	Overtime	Holiday
Clerical @ 45% above pay rate			
General Labor @ 50% above pay rate			

See Schedule Attached as Addendum 2"

2.2. These fees include total gross employee remuneration, all employer-paid payroll taxes, workers compensation insurance, group life and medical and dental benefits if applicable, pension benefits if applicable, and all employers-paid payroll-related costs.

2.3. Unless otherwise agreed to in writing, fees shall be paid to EPS no later than the day the payroll is due, normally on the 15th of each week. EPS shall notify Client at least seven (7) days in advance if due date is otherwise. In no event shall fees be paid later than one week after the close of each pay period owed. Following this grace period of one week, non-payment shall be deemed a material breach and be subject to the services charges and remedies agreed to below. Habitual lateness in payments more than twice during the period of this Agreement shall be deemed a material breach.

2.4. Should Client wish to employ any EPS personnel as direct-hire employees on the Client's payroll prior to 520 hours following start date, a conversion fee of "employees pay x 520 hours" shall be paid to EPS. The conversion fee shall extend to any extension of the term of this Agreement plus a period of twelve months and be based upon.

### 3. INSURANCE.

3.1. Employment Partnering Services, shall furnish and keep in full force and effect during the term of this Agreement workers' compensation insurance covering all employees filling Client job positions under the terms of this Agreement. EPS shall cause a certificate of insurance to be issued naming Client a certificate holder.

3.2. If any EPS employee is to drive a vehicle of any kind for Client, Client shall furnish liability insurance. The policy shall insure against public liability for bodily injury and property damage with the minimum combined single limit (CSL) \$1,000,000 and uninsured motorist insurance with a minimum CSL of \$1,000,000. In states where no "fault" insurance laws apply, Personal Insurance Protection (PIP) or equivalent coverage shall apply. Client shall cause its insurance carrier to issue a certificate of insurance naming EPS as additional insured, allowing not less than 30 days advance notice of cancellation or material change.

3.3. Client agrees to keep in full force and effect at all times during the term of this Agreement a comprehensive general liability insurance policy in the minimum amount of \$2,000,000 CSL insuring Client against bodily injury and property damage liability arising from its premises, operations, completed operations, and/or products. Said policy shall also include blanket contractual liability and personal injury liability. Client shall provide EPS with a certificate of insurance evidencing such coverages, said certificate provide 30 days notice in the event of cancellation of coverage.

3.4. Each party hereby waives any claim in its favor against the other party by way of subrogation or otherwise which arises during the initial or extended term of this Agreement for any and all loss or damage to any of its property which loss or damage is covered by policies of insurance. To the maximum extent permitted by insurance policies which may be owned by EPS and Client, or Client, for the benefit of each other, each party shall waive any and all right of subrogation which might otherwise exist.

3.5. If this is a contract to provide drivers for any vehicles owned by the Client, the Client specifically agrees by signing here to hold harmless and defend EPS against any and all claims which may be brought against EPS or forming any duties of driving for the Client.

EMPLOYMENT PARTNERING SERVICES, INC.  
a California Corporation  
EMPLOYMENT SERVICES AGREEMENT

4. **ADMINISTRATION**

4.1. EPS and Client agree that EPS is an independent contractor, not an agent of Client, and the employees provided by EPS to Client are employees of EPS. EPS is responsible for payment of employer federal, state and local taxes, those various employee benefits which may be specified, and all required federal, state and local employee payments or withholding from wages. Employment Partnering Services will not be responsible for Client's loss of profits, business goodwill, or consequential, special, or incidental damages.

4.2. EPS has sole responsibility for recruiting, hiring, training, evaluating, disciplining, replacing, and firing of individuals assigned to fill Client's designated job positions subject to Section 6 below.

4.3. Client and EPS may periodically review and evaluate performance and wages of employees to adjust wages and employee job functions and titles.

4.4. Client agrees that no money, securities, or negotiable instrument shall be transported or conveyed by any EPS employee in his/her duties for the Client.

5. **SUPERVISION**. Client and EPS may designate an on-site supervisor assigned to report on matters relating to services provided by EPS. If no on-site supervisor is designated, employees assigned to Client shall be under the supervision of Client who shall report all matters, including accidents and any other matters of urgency, to the EPS manager.

6. **APPROVAL OF EMPLOYEES**. EPS shall assign employees who are qualified to fill the job functions specified. EPS shall consult with Client in filling job positions and comply with the standards of the industry in California in providing employees. Any approval of any employee by the City, the City Manager or other representative of the City does not relieve EPS of responsibility in meeting the standard and complying with all applicable laws, codes and good business practices. EPS shall not be obligated to hire Client's former employees. Client may reject an employee furnished for unsatisfactory performance. Upon notification of such rejection, a replacement will be provided as soon as possible for the vacancy.

7. **OVERTIME, HOLIDAYS, VACATIONS, SICK LEAVE**

7.1. As desired by Client, and if eligible, EPS employees will receive additional pay for working overtime, the cost of which will be paid by Client. EPS shall determine when overtime is to be paid as required by applicable state or federal institute, or as required by Client.

7.2. Employees meeting eligibility requirements as established by EPS may be eligible for paid holidays, vacation, and/or sick leave. If eligible, the employees will be paid at the normal rate of pay, the cost of which will be borne by the Client. If EPS employees work on a holiday, they will receive additional pay as required by all applicable governing regulatory authorities or as determined by EPS.

7.3. All provisions for paid holidays, vacation pay, and paid sick leave will be in accordance with the intent of this section unless they have been changed by the attachment hereto of Addendum A, in which case Addendum A shall form part of this Agreement.

8. **SAFE WORK ENVIRONMENT**

8.1. Client shall comply with all health and safety laws, regulations, ordinances, directives, and rules imposed by controlling federal, state, and local government authorities and will immediately report all employee accidents and injuries to EPS.

8.2. Client agrees to comply at its expense with any specific directives from EPS, EPS workers compensation carrier, or any government agency having jurisdiction over the work place, health, and safety. EPS shall provide Client with notice of any directives from its WCAB carrier or any agency of government issuing directives for a safe work environment within seven (7) days of receipt.

8.3. Client shall provide or ensure use of all personal protective equipment, as required by federal, state, or local law, regulation, directive, or rule or as deemed necessary by EPS or EPS's workers' compensation carrier.

8.4. EPS workers compensation carrier and liability insurance carriers shall have the right to inspect Client's premises to ensure that EPS employees assigned to Client are not exposed to and unsafe work place. To the extent possible such inspection shall be scheduled at mutually convenient time.

8.5. Sections 8.1 through 8.4 above apply only where the conditions or workplace are under the Client's control. If such premises or conditions are under the control of EPS, then EPS shall be responsible for compliance as specified above.

**HOLD HARMLESS**. Client agrees to indemnify, defend, and hold EPS harmless from and against any and all liability, expense (including court costs and attorney fees), and claims for damage of any nature whatsoever, whether known or unknown, arising out of services performed under this Agreement, as though expressly set forth and described herein, which EPS may incur, suffer, become liable for, or which may be asserted or claim against EPS as result of the acts, errors, or omissions of Client or EPS.

# EMPLOYMENT PARTNERING SERVICES, INC.

a California Corporation

## EMPLOYMENT SERVICES AGREEMENT

Employees assigned to client including without limitation any violation of safe work environment conditions by Client as stated herein. Specifically, for contracts to provide drivers, Client agrees to hold harmless and defend EPS against any and all liability due to driver accident, errors or omissions of Client or EPS employees assigned to Client including without limitation any violation of safe work environment conditions by Client as stated herein. Specifically, for contracts to provide drivers, Client agrees to hold harmless and defend EPS against any and all liability due to driver accident, error, lack of judgment, or for whatever reasons whatsoever.

**10. SERVICE CHARGE AND REMEDIES.** Should EPS not be paid when due, Client shall pay a monthly service charge of five percent (5%) per month on the unpaid balance.

**11. MATERIAL BREACH OF AGREEMENT.** Agreement is immediately terminable at the option of an aggrieved Party in the event of a Material Breach. The following actions or failure to act either singularly or jointly shall constitute material breach of this Agreement:

11.1. Failure to pay the fees when due;

11.2. Failure to comply with any directive regarding health and safety of EPS employees from workers' compensation carrier or any government agency within a reasonable time period after receiving notice;

11.3. Usurping any right of EPS as employer of employees provided under this Agreement;

11.4. Failure to provide and maintain insurance and hold-harmless remedies required by this Agreement; and

11.5. Failure by EPS to provide employees under the terms of this Agreement.

**12. MISCELLANEOUS.**

**12.1. Entire Agreement/Amendments.** This Agreement and any attached Schedules, Addendums and Exhibits hereto constitute the final, complete and exclusive statement of the terms of this Agreement between the Parties and supersede all prior and contemporaneous understandings or agreements of the parties. Any amendment must be in writing signed by the parties. No party has been induced to enter into this Agreement, or in reliance on any representation or warranty outside those expressly set forth in the Agreement.

**12.2. Survival/Severability Provisions.** The provisions of this Agreement shall survive the termination, expiration or cancellation of this Agreement. If a court or arbitrator of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected.

**12.3. Assignments/Subcontracts.** This Agreement shall not, nor shall any interest therein, be assignable or subcontracted, by either party without the written consent of both parties. Any such assignment or subcontract without such consent shall be void.

**12.4. Right to Counsel/Drafting Party.** Each party acknowledges that this Agreement is negotiated between equals in a commercial setting at arms length and the parties have had the agreement reviewed or have had the opportunity to have the agreement reviewed by counsel of their choice and that neither side shall be deemed the author of the agreement.

**12.5. Full Understanding.** This Agreement sets forth the full and complete understanding of the parties and any prior Agreement, written or oral, is without any force or effect.

**12.6. Choice of Laws/Venue.** This Agreement shall be deemed as entered in the State of California and interpreted and construed in accordance with the laws of the State of California without regard for conflict of laws. Any court action or arbitration or mediation brought in equity or law to recover damages or enforce the terms of this Agreement shall be brought in the Superior Court of the State of California, County of Imperial, or if diversity jurisdiction exists in the Central District or the United States District Court for the Southern District of California.

**12.7. Attorney's Fees.** If either party brings an action or proceeding against the other at law or to enjoin, enforce or declare its rights including the cancellation or recession of this Agreement, prevailing party shall be entitled to reasonable attorney's fees and costs incurred in connection therewith.

**12.8. Binding Effect.** The terms and conditions of this Agreement shall continue to be binding upon both parties hereto, their successors and assigns. No amendment shall be binding unless in writing.

**12.9. Notice.** All notices required pursuant to this Agreement are to be served at the location as set forth under the signatures below. Any notice or demand required under this agreement shall be given in writing by personal delivery or by certified or registered mail with return receipt requested which shall be effective 48 hours after mailing. The notice of demand shall be addressed to the party's address specified by that party. In matters which require immediate communication, telephone or facsimile or communications shall be used with written follow-up confirmation.

**12.10. Warranty of Authorization.** Each person who signs below, warrants that they have full authority to enter into and execute this Agreement on behalf of the entity named and on whose behalf such person purports to sign as the authorized representative.

EMPLOYMENT SERVICES AGREEMENT

**12.11. Further Assurances.** Each Party shall execute and deliver such additional instruments and other documents and shall take such further actions as may be necessary or appropriate to effectuate, carry out and comply with all of the terms of this Agreement and the transactions contemplated hereby.

**12.12. Waiver.** The waiver by any party to this Agreement of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement by that party.

**12.13. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and together shall constitute one and the same agreement, with one counterpart being delivered to each party hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of this date:

2/27/07

Employment Partnering Services, Inc.  
a California Corporation

City of Calexico

Robert Herrera, President/CEO  
416 East Second Street  
Suite 201  
Calexico, CA 92231

By:

Ralph Velez  
City Manager  
608 Heber Avenue  
Calexico, CA 92231

Phone: (760) 357-4344  
Facsimile: (760) 357-4300

Phone: (760) 768-2180  
Facsimile: (760) 357-5864

## **CITY OF CALEXICO**

### **CLASS TITLE: HOUSING & REDEVELOPMENT MANAGER**

#### **BASIC FUNCTION:**

Under the direction of the Redevelopment & Economic Development Director, plan, organize and direct Housing program operations and activities to provide financial housing assistance to identified low-income families; coordinate communications, personnel, reports and information to assure smooth and efficient Program activities and meet the housing needs of identified families; supervise and evaluate the performance of assigned personnel.

#### **REPRESENTATIVE DUTIES:**

##### **ESSENTIAL DUTIES:**

Plan, organize and direct Housing program operations and activities to provide financial housing assistance to identified low-income families; assist with establishing and maintaining related time lines and priorities; assist in assuring related activities comply with established standards, requirements, laws, codes, regulations, policies and procedures.

Coordinate communications, personnel, reports and information to assure smooth and efficient Program activities and meet the housing needs of identified families; assist in the development, implementation and management of related services, projects, plans, goals, objectives, strategies, standards, processes and procedures; assist in providing oversight for City construction, alteration and renovation projects related to the Housing program.

Supervise and evaluate the performance of assigned personnel; interview and select employees and recommend transfers, reassignment, termination and disciplinary actions; schedule and assign employee duties and review work to assure compliance with established standards, requirements and procedures.

Compile information and prepare and maintain a variety of regular and periodic records and reports related to the Housing program, community housing, funding, accomplishments, personnel and assigned activities; assure mandated reports are submitted to appropriate governmental agency in accordance with established time lines and requirements.

Provide consultation and technical assistance to builders, homeowners, applicants, personnel, administrators, outside agencies and the public concerning the Housing program and related services; respond to inquiries and provide detailed and technical information concerning related standards, requirements, projects, loans, funding, laws, codes, regulations, processes, policies and procedures.

Coordinate Housing program communications, services and information between City departments, administrators, personnel, homeowners, applicants, architects, engineers, developers, outside organizations, governmental agencies and the public; meet with interested property owners to explain the Housing program; assure proper and timely resolution of Program issues and conflicts.

**October 2006**

**Ewing Consulting Services**



Plan, organize and direct subsidized housing services to facilitate and enhance affordable housing for identified families; meet and confer with developers regarding affordable housing and related programs and projects; supervise the review and processing of loan applications; assure qualified families are properly identified, enrolled and eligible for housing programs; review, analyze and authorize homeowner loans, progress payments and construction projects as appropriate.

Assist with administering residential building inspections to assure construction, renovation and alteration projects comply with established laws, codes and requirements; meet with contractors and others to discuss projects, explain the Housing program and answer questions concerning ongoing construction projects and related Program services; prepare cost estimates for construction projects; coordinate and participate in building inspections as needed.

Assist in the development and preparation of the annual preliminary budget for the Housing program; analyze and review budgetary and financial data; control and authorize expenditures in accordance with established limitations; participate in the preparation and development and contracts, and descriptions of construction work for bids.

Research and obtain State and federal funding for the City Housing program as directed; prepare applications for State and federal funding; meet with representatives of funding agencies and the City's representatives.

Provide technical information and assistance to the Redevelopment & Economic Development Director regarding Housing program issues, needs, services and activities; assist in formulating and developing related policies, procedures and programs.

Communicate with City administrators, personnel, various outside agencies and the public to exchange information, coordinate activities and resolve issues or concerns.

Operate a variety of office equipment including a copier, fax machine, computer and assigned software; utilize a variety of inspection devices such as measuring tapes, electrical testers and various hand tools; drive a vehicle to conduct work.

Attend and participate in a variety of meetings, workshops and committees as assigned; coordinate and conduct Program staff meetings; present materials and information concerning the City Housing program and related issues, projects and activities.

**OTHER DUTIES:**

Perform related duties as assigned.

**KNOWLEDGE AND ABILITIES:****KNOWLEDGE OF:**

Management of Housing program operations and activities and related State and federal services.

HUD regulations and requirements applicable to low-income housing and housing authorities.

Housing financing and development.

Grant writing methods and techniques.

**October 2006**

**Ewing Consulting Services**

State and federal family eligibility and enrollment requirements for housing programs.  
Practices, procedures and techniques involved in the processing of housing loans.  
Comprehensive organization, activities, goals and objectives of the City Housing program.  
Oral and written communication skills.  
Budget preparation and control.  
Laws and City code requirements related to residential buildings.  
Policies and objectives of assigned programs and activities.  
Principles and practices of administration, supervision and training.  
Applicable laws, codes, regulations, policies and procedures.  
Interpersonal skills using tact, patience and courtesy.  
Operation of a computer and assigned software.  
Public relations techniques.

**ABILITY TO:**

Plan, organize and direct Housing program operations and activities to provide financial housing assistance to identified low-income families.  
Coordinate communications, personnel, reports and information to assure smooth and efficient Program activities and meet the housing needs of identified families.  
Supervise and evaluate the performance of assigned personnel.  
Assist in the development, implementation and management of related services, projects, plans, goals, objectives, strategies, standards, processes and procedures.  
Compile information and prepare and maintain a variety of regular and periodic records and reports related to the Housing program, community housing, funding, accomplishments and assigned duties.  
Provide consultation and technical assistance to builders, homeowners, applicants, outside agencies and others concerning the Housing program and related services.  
Assure qualified families are properly identified, enrolled and eligible for housing programs.  
Research and obtain State and federal funding for the City Housing program as directed.  
Interpret, apply and explain laws, codes, regulations, policies and procedures.  
Operate a computer and assigned office equipment.  
Analyze situations accurately and adopt an effective course of action.  
Meet schedules and time lines.  
Work independently with little direction.  
Plan and organize work.  
Communicate effectively both orally and in writing.  
Establish and maintain cooperative and effective working relationships with others.

**EDUCATION AND EXPERIENCE:**

Any combination equivalent to: bachelor's degree in public administration, social services or related field four years increasingly responsible experience working with public housing services and programs.

Work independently with little direction.  
Operate standard office equipment including a computer and engineering software.  
Meet schedules and time lines.  
Plan and organize work.  
Communicate effectively both orally and in writing.  
Establish and maintain cooperative and effective working relationships with others.

**EDUCATION AND EXPERIENCE:**

Any combination equivalent to: graduation from high school and five years construction, inspection or related experience.

**LICENSES AND OTHER REQUIREMENTS:**

Valid California driver's license.

**WORKING CONDITIONS:**

**ENVIRONMENT:**

Indoor and outdoor environment.  
Seasonal heat and cold or adverse weather conditions.  
Exposure to fumes, dust and odors.  
Driving a vehicle to conduct work.

**PHYSICAL DEMANDS:**

Dexterity of hands and fingers to operate various equipment.  
Hearing and speaking to exchange information.  
Sitting or standing for extended periods of time.  
Bending at the waist, kneeling or crouching to inspect sites.  
Reaching overhead, above the shoulders and horizontally.  
Climbing ladders during inspections.  
Walking.

**HAZARDS:**

Exposure to dust and fumes.  
Working around and with machinery having moving parts.  
Working at heights.

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of the \_\_\_\_ day of \_\_\_\_, 2010, by and between the City of Calxico ("City") and \_\_\_\_\_ ("Company").

### RECITALS

A. Company is specially trained, experienced, certified and competent to perform the special services which will be required by this Agreement which is the provision of temporary labor to the City; and

B. Company possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

### AGREEMENT

1. Scope of Services. The Company shall furnish temporary employment services in a professional manner. Company shall perform the services described on Exhibit A which is attached hereto and incorporated herein by reference. Company shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction of the City.
2. Time of Performance. The services of Company are to commence upon execution of this Agreement and shall continue until the one year anniversary date of execution of the Agreement unless terminated sooner pursuant to the terms of this Agreement. City may, upon 48 hours notice, inform Company that City no longer needs the services of a particular employee provided by Company under this Agreement. City shall thereafter not be responsible for payment of any costs for such dismissed employee. Time is of the essence for every provision of this Agreement that states a time for performance and for every deadline imposed by the City. Further, City shall review the services provided by Company under this Agreement on an annual basis.
3. Compensation. Compensation to be paid to Company shall be as set forth in Exhibit B attached hereto. Company is solely responsible for the payment of employer federal, state and local taxes for Company's employees, any employee benefits provided by Company to its employees, and all required federal, state and local employee payments or withholding from wages. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
4. Method of Payment. Unless otherwise agreed to in writing, fees shall be paid to Company no later than the day the Company's payroll is due, normally on \_\_\_\_\_ of each week. Company shall notify City with at least seven (7) calendar days in advance if the due date is otherwise. Any requests by Company for the City to make payment to a different

name/entity than Company shall be treated as a request for an assignment and the process outlined under Section 20 of this Agreement shall be followed.

5. Independent Contractor. It is understood that Company and any of its personnel, in the performance of the work and services agreed to be performed, shall act as and be independent contractors and shall not act as agents or employees of the City. Company or any of its personnel shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Company hereby expressly waives any claim it may have to any such rights.

6. Interest of Company. Company (including principals, associates and employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by and during this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Company's services hereunder. Company further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement. Company is not a designated employee within the meaning of the Political Reform Act.

7. Professional Ability of Company/Provision of Labor. City has relied upon the professional training and ability of Company to perform the services hereunder as a material inducement to enter into this Agreement. Company shall therefore provide properly skilled personnel to perform all services under this Agreement. All work performed by Company under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Company's field of expertise. Company shall consult with City and assign employees who are qualified to fill the job functions specified by City. Any approval by City of any employee provided by Company does not relieve Company of the responsibility for complying with all applicable laws, codes, and good business practices. Company has sole responsibility for recruiting, hiring, training, evaluating, disciplining, replacing, and firing of individuals assigned to fill City's designated job positions. However, Client may reject an employee furnished by Company as specified in Section 2 above.

8. Indemnity.

(a) To the fullest extent permitted by law, the Company shall (1) immediately defend, and (2) indemnify the City, and its councilmembers, officers, and employees from and against all liabilities regardless of nature or type arising out of or resulting from Company's or Company's employees performance of services under this contract, or any negligent or wrongful act or omission of the Company's or Company's officers, employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Company's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of the City. If it is finally adjudicated that liability is caused by the comparative

active negligence or willful misconduct of the City, the Company's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party. This indemnification obligation specifically includes any lawsuits, actions or proceedings filed by Company's employees related to employment or payroll issues.

(b) The duty to defend is a separate and distinct obligation from the Company's duty to indemnify. The Company shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the City and its Councilmembers, officers, and employees, immediately upon tender to the Company of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. The defense shall be done by counsel approved by the City. An allegation or determination of comparative active negligence or willful misconduct by the City does not relieve the Company from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if the Company asserts that liability is caused in whole or in part by the negligence or willful misconduct of the City. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of the City, Company may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs.

(c) The review, acceptance or approval of the Company's work or work product by the City shall not affect, relieve or reduce the Company's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

#### 10. Insurance Requirements.

a. Company, at Company's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies.

i. Workers' Compensation Coverage. Company shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California throughout the duration of this Agreement. In addition, Company shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Company for City.

ii. General Liability Coverage. Company shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit

iii. Automobile Liability Coverage. Company shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Company and employees of Company arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

b. Policy Endorsements. Each general liability, worker's compensation, and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. The City of Calexico, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Company, including materials, parts or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

v. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Company shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance and Endorsements. Company shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein prior to approval and execution of this Agreement by the City and such certificates will be attached under Exhibit C to this Agreement. Thereafter, Company shall submit proof of current certification of insurance on the anniversary date of this Agreement to be kept on file with the City at all times during the term of this Agreement. Failure of Company to submit the certification forms annually or any changes in the insurance that do not meet the levels set forth in this Agreement, shall be grounds for immediate termination of this Agreement by City.

11. Compliance with Laws. Company shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

12. Licenses. Company represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Company to practice its profession. Company represents and warrants to City that Company shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Company to practice its profession. Company shall obtain a business license from the City of Calexico to be in effect for the duration of this Agreement. Company shall also complete a vendor registration form with the Department of Finance prior to commencement of this Agreement. All required licenses and forms specified in this Section shall be provided to the City prior to approval and execution of this Agreement by the City and such licenses/forms will be attached under Exhibit C to this Agreement. Thereafter, Company shall submit proof of current licenses/forms on the anniversary date of this Agreement to be kept on file with the City at all times during the term of this Agreement. Failure of Company to submit the certification forms annually, shall be grounds for immediate termination of this Agreement by City.

13. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Imperial, California.

14. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its



address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Calexico, City Manager  
608 Heber Ave.  
Calexico, CA 92231

If to Company:

15. Company's Books and Records.

a. Company shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Company to this Agreement.

b. Company shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Company's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Company's business, City may, by written request by any of the above named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Company, Company's representatives, or Company's successor-in-interest.

16. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Company. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

17. Amendments. This Agreement may be modified or amended only by a written document executed by both Company and City and approved as to form by the City Attorney.
18. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.
19. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
20. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Company. Assignments of any or all rights, duties or obligations of the Company under this Agreement will be permitted only with the express written consent of the City Council. Company shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If the City Council consents in writing to such subcontract, Company shall be fully responsible to City for all acts or omissions of the subcontractor. When the City Council considers a request from Company to assign any or all of its rights under this Agreement to a different legal entity, the City Council shall consider Company's past performance and review all outstanding obligations under this Agreement and to any of Company's employees before approving or disapproving of the request to assign this Agreement. Any assignments or subcontracting made without the express written consent of the City Council shall render this Agreement null and void and City shall be entitled to immediately terminate this Agreement with no prior notice to Company. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.
21. Termination. This Agreement may be terminated immediately for cause or by either party without cause upon fifteen days' written notice of termination. Upon termination, Company shall be entitled to compensation for services performed up to the effective date of termination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF CALEXICO:

COMPANY:

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Victor Carrillo  
City Manager

APPROVED AS TO FORM:

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Jennifer M. Lyon  
City Attorney

ATTEST:

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Lourdes Cordova  
City Clerk

**EXHIBIT A**  
**SCOPE OF SERVICES**  
(to be attached)

**EXHIBIT B**  
**SCHEDULE OF CHARGES**

**EXHIBIT C**  
**Proof of Insurance and Applicable Licenses**